IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

:: J U D G M E N T ::

D.B. CIVIL SPECIAL APPEAL NO.76/1996

Ramjilal Meena
Vs.
The State of Rajasthan

Date of Judgment :: 03-04-2007

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri R.C. Joshi for the appellant.
Shri B.L. Awasthi, Addl.G.A. for the State.

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BY THE COURT (PER HON'BLE THE CHIEF JUSTICE)(ORAL):-

This special appeal is directed against the order of the learned Single Judge dated 19.4.1995 in S.B. Civil Writ Petition no.1167/1995 dismissing the writ petition of the appellant. The appellant had filed the writ petition seeking direction upon the respondents to fill the vacancies in the quota of Scheduled Castes and Scheduled Tribes (SC/ST) for the year 1993-94, and to appoint the appellant against the vacancies meant for ST candidates pursuant to the recommendation of the Departmental Promotion Committee (DPC) with effect from the date when the general candidates were promoted. Facts of the case, briefly stated, are as follows.

The appellant was appointed as Assistant Commercial Taxes Officer on recommendation of the Rajasthan Public Service Commission on 19.10.1977.

He joined the post on 8.11.1977. On 27.10.1989 he was promoted to the post of Commercial Taxes Officer on the recommendation of the DPC against the vacancies for the year 1989. On 18.10.1993, seniority list of the members of Commercial Taxes Service was issued wherein his name was placed at Serial no.18 in the category of junior scale. Promotion to the senior scale is made 50% on the basis of merit and 50% on the basis of seniority -cum- merit as provided in rule 18(4) of the Rajasthan Commercial Taxes Service Rules, 1971. For the year 1993-94, 12 vacancies in the senior scale were available as per rule 9 out of which two each were reserved for SC/ST candidates. The DPC convened for the purpose found the appellant suitable for such promotion and he was placed at Serial no.9 of the list. Amongst the ST candidates he was number one. According to the appellant, by different orders between 4.6.1993 and 27.1.1994, eight general candidates were promoted. However no candidate in the SC/ST category was promoted and the remaining four vacancies were also filled by general candidates. The appellant made representation and finally filed writ petition in this Court being S.B. Civil Writ Petition no.4884/1994. This Court vide order dated 5.9.1994 declined to interfere in the matter observing that the appellant had filed representation which was pending consideration of the Government. However direction was issued to the State Government to decide the representation within two months and the petition was thus disposed of. The appellant produced copy of the said order. He filed another representation through lawyer. On 24.12.1994 he was informed that no vacancy was

available for the year 1993-94. In the circumstances, the appellant approached this Court again in S.B. Civil Writ Petition no.1167/1995 i.e. the connected writ petition giving rise to this appeal which was summarily dismissed as mentioned above on 19.4.1995.

The order is brief and may be quoted in extenso as under :-

> "Heard. No one junior to the petitioner or anyone from the general category has been appointed against the vacancy stated to be lying vacant. If no vacancy has been filled in ignoring the petitioner, there cannot be any cause of action. The writ petition is dismissed."

As the writ petition was dismissed in limine, the respondent did not file any reply. Reply, however, has been filed in this appeal. The only statement which may be relevant for disposal of this appeal therein is that the vacancies in the senior scale of Rajasthan Commercial Taxes Services for the year 1993-94 were filled by promoting candidates belonging to the general category; the vacancies meant for the ST candidates were also filled by general candidates. Having made this statement which is as a matter of fact in the nature of admission of the appellant's case, the respondents have referred to the order of the learned Single Judge to the effect that no junior to the appellant having been appointed against the vacancies, there was no cause of action to the appellant and hence the petition is fit to be dismissed.

As the circumstances in which the vacancies meant for the ST candidates were admittedly filled

by general candidates have not explained, we sent for the record which was produced by the State counsel for our perusal. We looked into the records with the assistance of the counsel. The facts emerging therefrom are as follows.

Twelve vacancies in the post of Assistant Commissioner i.e. Commercial Taxes Officer (Senior Scale) were available for the year 1993-94 against which officers (in the Junior Scale) of general category were promoted. In the meantime, certain orders of the High Court were received in respect of officers who were to be promoted with effect from previous years, namely, (1) K.C. Gupta (2) J.L. Chaurasia (3) Tansukh Das Sharma (4) K.L. Meena (5) O.P. Baheti (6) N.S. Bordia (7) G.P. Goyal and (8) R.B. Choudhary. These eight persons were accordingly promoted as Commercial Taxes Officer (Junior Scale) at the first instance against the vacancies for the year 1982-83 and thereafter six out of them namely, (1) S.N. Bordia (2) Tansukh Das Sharma (3) R.B. Choudhary (4) J.L. Chaurasia (5) O.P. Baheti and (6) G.P. Goyal were promoted against the vacancies for the years 1988-89, 1989-90 and 1990-91 respectively in the senior scale. Besides them, two more officers who were promoted in the senior scale namely, Shri P.C. Paliwal and Shri R.L. Chaparwal against the vacancies for the years 1988-89 and 1989-90 respectively. After promoting these officers who all belonged to general category, no vacancy remained for the year 1993-94 against which candidates of the reserved category could be promoted. In the circumstances, decision was taken in consultation with the Chairman, Rajasthan Public Service

Commission and the Personnel Department to promote the candidates who had been found suitable for promotion, against the vacancies for the subsequent year i.e.1994-95. In taking decision, the Department took the view that they belonged to reserve category and their promotion from 1994-95 would not affect seniority as in future promotion they would get preference. Accordingly, the appellant and one Ramhet Chandrawal who could not be promoted against the vacancies for the year 1993-94 were promoted against the vacancies for the subsequent year 1994-95.

It would thus appear that the case of the appellant stands corroborated by the notings in the file. It appears to be the admitted position that the vacancies meant for the SC/ST candidates were filled by the general candidates professedly in compliance of the judgments of this Court in their cases. The point for consideration is whether the decision of the respondents to promote the appellant against the vacancies for the year 1994-95 in stead of 1993-94 was in accordance with law and whether the same warrants any interference by this Court.

We do not wish to go into the circumstances in which the afore-mentioned persons were promoted against the vacancies for the year 1993-94 which was in compliance of the directions of this Court. But one thing is clear that they could not be promoted at the cost of the appellant. The vacancies in question were meant for SC/ST candidates. The appropriate course for the department was to create shadow/supernumerary posts

for them so that the directions of this Court in their case could be complied. As a matter of fact while considering the representation of the appellant, it was suggested that one of the options was to create shadow post for the appellant and other candidates of the reserve category and promote them against such vacancies. We are of the view that in stead of creating shadow/supernumerary posts for the appellant and other reserve category candidates, such supernumerary posts should be created for the candidates who came to be promoted in compliance of the Court's directions.

As indicated above, the appellant had been found suitable by the DPC. The vacancies admittedly being in the quota of SC/ST, the same could not be filled by general candidates. The fact that the appellant was promoted against the vacancies for the year 1994-95 was no solace or compensation to him, for such delayed promotion can result in chain of consequences which may adversely affect the appellant's prospects for further promotions.

The aforesaid persons promoted in compliance of the Court's directions must have retired from service in the meantime, and therefore the creation of requisite number of supernumerary posts and their promotion against such posts is not likely to disturb the seniority position in the department while it may ensure grant of promotion to the appellant from the due date.

In the circumstances, the order of the learned Single Judge is set aside and the writ

petition is allowed with a direction to the respondents to promote the appellant against the vacancies meant for ST candidates for the year 1993-94 on the basis of recommendation of the DPC and in order to facilitate such promotion, create requisite number of supernumerary posts and adjust the aforementioned persons against those posts.

The appeal is allowed in the above terms.

[MOHAMMAD RAFIQ], J. [S.N. JHA], CJ.

Skant/-